

APPEAL NO. 031420
FILED JULY 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 24, 2003. The hearing officer determined that the appellant (claimant) has a 0% impairment rating (IR) as certified by the required medical examination (RME) doctor. The claimant appeals, asserting that the hearing officer erred by not giving presumptive weight to the report of the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The evidence shows that the claimant sustained compensable injuries on _____, in the form of bilateral carpal tunnel syndrome and left cubital tunnel syndrome. The claimant underwent right carpal tunnel release surgery on October 10, 2001, and left carpal tunnel and cubital tunnel release surgery on April 24, 2002. The parties stipulated that the claimant reached maximum medical improvement (MMI) on July 15, 2002.

The designated doctor certified the claimant with a 16% IR under the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). The designated doctor's report indicates that the claimant presented with complaints of tingling and numbness in her hands bilaterally, and difficulty holding objects for any length of time. The designated doctor's clinical examination revealed:

On examination, deep tendon reflexes were symmetrical. No edema or inflammation was noted. She had a scar over the right palmar surface of the wrist as well as along the radial aspect of the wrist at the thenar eminence compatible with carpal tunnel surgery. The left arm showed a scar over the left palm/wrist region consistent with carpal tunnel surgery as well as a healing scar over the medial aspect of the left elbow compatible with cubital tunnel surgery. She had a positive Tinel's at the left elbow as well as a positive Phalen's at the left wrist, negative Tinel's at the left wrist and negative reverse Phalen's at the left wrist. She had negative Tinel's, negative Phalen's and negative reverse Phalen's at the right wrist. The patient's various scars were tender to palpation. Two-point discrimination was tested bilaterally with a Touch Test Two-Point Discriminator Dial. The patient was tested laterally and horizontally along the dorsal and volar aspects of the insertion of the median and ulnar nerves. On the right the results showed 10 out of 10 correct at 6mm

between two points along the insertions of the median and ulnar nerves. On the left she had 8 out of 10 correct at 6mm between two points along the insertions of the median and ulnar nerves. These results are consistent with a normal two-point discrimination. She was tested utilizing the J Tech Tracker ROM, which is a computerized range of motion measurement system utilizing dual inclinometers. Range of motion tests were performed in accordance with the protocols published by the American Medical Association. She was also tested utilizing the Tech Range Track, which is a computerized goniometer for measuring joint range of motion. All range of motion tests again were performed in accordance with the protocols published by the American Medical Association. Her studies demonstrated no evidence for any strength loss on either the right or left upper extremities. Range of motion studies did show some restriction of the left elbow on flexion.

Based on the claimant's history of persistent pain and discomfort and positive electromyogram (EMG) findings prior to the claimant's surgeries, the designated doctor certified the claimant with a 16% IR under Table 16 of the AMA Guides, regarding upper extremity impairment due to entrapment neuropathy.

The RME doctor certified the claimant with a 0% IR. The RME doctor's report indicates that the claimant presented with complaints of occasional stabbing pain in both hands and diminished grip strength. The claimant's physical examination revealed no atrophy, normal grip strength testing, normal two-point discrimination testing at 5 millimeters, negative Tinel's of the volar wrist, but a "trace of Tinel's" over the medial left elbow, and no finding of neuroma sensation. The RME doctor certified the claimant with a 0% IR, given the absence of sensory and motor deficits.

The Commission requested clarification of the designated doctor's IR certification in view of the RME doctor's report. In his response, the designated doctor stated:

I would note from the onset that the examination by [the RME doctor] did not significantly differ from the findings of my examination of [the claimant], which I performed on September 5, 2002. I would note however that in our evaluation the patient did not demonstrate adequate consistent findings on grip strength testing, and this was not used in my estimation of her impairment. . . . There is certainly no disagreement that the patient had entrapment neuropathy of the right and left upper extremities and underwent surgical correction for this. Therefore, it would be appropriate to evaluate and rate the patient's impairment utilizing the guidelines as found under the section "Entrapment Neuropathy. . . ." I would therefore state that my estimation of impairment via the use of these Guides is both correct and appropriately reflects the degree of impairment relative to the injuries sustained by [the claimant] in her work-related accident...I would continue to assign her the impairment rating of 16% whole person.

The hearing officer found that the designated doctor's report was contrary to the great weight of other medical evidence because it was not based on objective clinical findings of permanent impairment.

The hearing officer did not err in determining that the claimant's IR is 0% as certified by the RME doctor. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. If the great weight of the other medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. Id. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(c)(3)(A) (Rule 130.1(c)(3)(A)), provides that an assignment of an IR for the current compensable injury must be based on the employee's medical records and the certifying examination, and the doctor assigning the impairment rating shall identify objective clinical or laboratory findings of permanent impairment for the current compensable injury. We have held that a claimant's IR, under the fourth edition of the AMA Guides, may not be based on impairment that the claimant no longer has at the time of the designated doctor's IR examination, but the impairment must be "permanent" to be included in an IR. Texas Workers' Compensation Commission Appeal No. 030091-s, decided March 5, 2003. Under Section 3.1k, p. 46 of the AMA Guides, permanent impairment resulting from a peripheral nerve injury is determined by the extent of loss of function due to sensory and motor deficits. In view of the evidence above, it appears that the designated doctor based the claimant's IR on her diagnosis of bilateral carpal tunnel and cubital tunnel syndromes and not upon objective clinical findings of no sensory or motor deficits to the claimant's upper extremities at the date of MMI. Accordingly, we cannot conclude that the hearing officer's IR determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. In its decision, the majority does not suggest that the designated doctor erred in using Table 16 of the fourth edition of the AMA Guides to rate the claimant's bilateral carpal tunnel syndrome and left cubital tunnel syndrome. And, indeed, the majority would have no basis for so stating given that the use of Table 16 as an alternative method to rate impairment of the hand and upper extremity secondary to entrapment neuropathy is specifically authorized on page 56 of the fourth edition of the AMA Guides. Rather, the majority affirms the hearing officer's determination that the designated doctor's report, and the 16% IR, is not entitled to presumptive weight because "it appears that the designated doctor based the claimant's IR on her diagnosis of bilateral carpal tunnel and cubital tunnel syndromes and not upon objective clinical findings of sensory or motor deficits to the claimant's upper extremities at the date of MMI." After reviewing the designated doctor's report and his response to a request for clarification from the Commission, I cannot agree that the designated doctor assigned a rating based upon the claimant's diagnosis without regard to objective clinical findings. In my view, the designated doctor provides sufficient explanation in the narrative report accompanying his Report of Medical Examination (TWCC-69) and in his response to the Commission's request for clarification, to satisfy the requirement that the IR be based upon the claimant's condition at the time of MMI. Accordingly, I believe that the difference between the designated doctor's 16% IR and the 0% IR, assigned by the doctor who examined the claimant at the request of the

carrier, represents a genuine difference of medical opinion as to the appropriate rating to assign to the claimant in this instance. We have long held that by giving presumptive weight to the designated doctor, the 1989 Act provides a mechanism for accepting the designated doctor's resolution of such differences. Texas Workers' Compensation Commission Appeal No. 001659, decided August 25, 2000; Texas Workers' Compensation Commission Appeal No. 001526, decided August 23, 2000. Thus, I would reverse the determination that the claimant's IR is 0% and render a new determination that the claimant's IR is 16%, as certified by the designated doctor.

Elaine M. Chaney
Appeals Judge